



# PUBLIC NOTICE

Federal Communications Commission  
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DA 03-3699

Released: November 18, 2003

## **DOMESTIC SECTION 214 APPLICATION FILED FOR ACQUISITION OF ASSETS OF EPIK COMMUNICATIONS, INCORPORATED BY PROGRESS TELECOM, LLC**

### **STREAMLINED PLEADING CYCLE ESTABLISHED**

**WC Docket No. 03-236**

On November 5, 2003, EPIK Communications, Incorporated (EPIK) and Progress Telecom, LLC (PTC) (collectively, the "Parties"), pursuant to sections 63.03 and 63.04 of the Commission's rules,<sup>1</sup> requested consent to transfer control of certain assets of EPIK to a restructured PTC

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because the proposed transaction would result in the transferee having a market share in the interstate, interexchange market of less than 10 percent, the transferee would provide competitive telephone exchange services or exchange access services exclusively in geographic areas served by a dominant local exchange carrier that is not a party to the transaction; and neither of the applicants is dominant with respect to any service.<sup>2</sup>

EPIK, a corporation, is a subsidiary of Odyssey Telecorp, Inc. (Odyssey). EPIK provides collocation, dark fiber, and wholesale telecommunications broadband services to wireless and international telecommunications carriers, long distance companies, Internet service providers, enterprise customers and competitive local exchange carriers primarily in the southeast U.S.

<sup>1</sup> 47 C.F.R. §§ 63.03, 63.04, *see* 47 U.S.C. § 214.

<sup>2</sup> 47 C.F.R. § 63.03(b)(2)(i), *see* 47 C.F.R. § 63.03(b)(3) ("For purposes of (b)(1) and (2) of this paragraph, the terms 'applicant,' 'carrier,' 'party,' and 'transferee' (and their plural forms) include any affiliates of such entities within the meaning of section 3(1) of the Communications Act of 1934, as amended"), Letter from Joan M. Griffin, Counsel for PTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-236 at 1 (filed Nov. 14, 2003).

PTC, a limited liability company, is a subsidiary of Progress Telecommunications Corporation (Old PTC) and Caronet, Inc. (Caronet). Caronet and Old PTC are indirect, wholly-owned subsidiaries of Progress Energy, Inc. (Progress Energy). PTC provides wireless infrastructure, collocation and dark fiber services, and wholesale telecommunications broadband services to wireless and international telecommunications carriers, long distance companies, Internet service providers, enterprise customers and competitive local exchange carriers primarily in the southeast U.S.

The application states that on November 3, 2003, the Parties entered into a "Contribution Agreement" which provides that Old PTC, Caronet, and EPIK will contribute certain assets<sup>3</sup> to PTC, in return for which PTC will issue membership interests. Following issuance of these membership interests, Old PTC will hold a 55 percent ownership interest, Caronet will hold 5 percent ownership interest; and EPIK will hold a 40 percent ownership interest. The stock of Caronet will then be sold to Odyssey in return for cash, giving Odyssey an additional 5 percent ownership interest in PTC. Caronet will become a wholly-owned subsidiary of Odyssey. Following consummation of the transactions contemplated by the Contribution Agreement, Old PTC will hold a 55 percent ownership interest in PTC, and Odyssey will hold a 45 percent ownership interest in PTC through EPIK and Caronet.

The applicants state that the public interest would be served if the EPIK assets are transferred to PTC pursuant to the Contribution Agreement and the transfer will help ensure that PTC is a viable long-term competitor to other carriers in the southeastern U.S. At the same time, the pro-competitive benefits of the transfer of the EPIK assets will not be diminished by any anticompetitive effects. PTC will provide high-quality communications services to the customers of EPIK without interruption and without change in rates, terms or conditions.

### **GENERAL INFORMATION**

The acquisition of assets identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any acquisition of assets application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.<sup>4</sup> Unless otherwise notified by the Commission, Applicants are permitted to transfer on the 31<sup>st</sup> day after the date of this notice.<sup>5</sup> Comments may be filed using the Commission's Electronic Comment

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<sup>3</sup> The applicants state that the assets to be transferred from EPIK to PTC include telecommunications facilities and contracts with other telecommunications carriers. See Letter from Joan M. Griffin, Counsel for PTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 03-236 at 1 (filed Nov. 18, 2003).

<sup>4</sup> See 47 C.F.R. § 63.03(a).

<sup>5</sup> Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to [<http://www.fcc.gov/e-file/ecfs.html>](http://www.fcc.gov/e-file/ecfs.html). Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and should include the following words in the subject line "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

**In addition, one copy of each pleading must be sent to each of the following:** \_\_\_\_\_

- (1) the Commission's duplicating contractor, Qualex International, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554, e-mail [qualexint@aol.com](mailto:qualexint@aol.com); facsimile (202) 863-2898, phone (202) 863-2893,
- (2) Carmell Weathers, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 6-A423, Washington, D.C. 20554; e-mail [Carmell.Weathers@fcc.gov](mailto:Carmell.Weathers@fcc.gov),
- (3) Christi Shewman, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C142, Washington, D.C. 20554; e-mail [Christi.Shewman@fcc.gov](mailto:Christi.Shewman@fcc.gov),
- (4) Julie Veach, Competition Policy Division, Wireline Competition Bureau, 445 12<sup>th</sup> Street, S.W., Room 5-C124, Washington, D.C. 20554, e-mail [Julie.Veach@fcc.gov](mailto:Julie.Veach@fcc.gov);

(5) Christopher Killion, Office of General Counsel, 445 12<sup>th</sup> Street, S W , Room 8-C740, Washington, D C 20554, e-mail [Christopher.Killion@fcc.gov](mailto:Christopher.Killion@fcc.gov)

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898. or via e-mail [qualexintl@aol.com](mailto:qualexintl@aol.com)

For further information, please contact Carmell Weathers at (202) 418-2325, or Christi Shewman at (202) 418-1686

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